



A.S.No.276 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.276 of 2011

J.Samuel, R.D

..Appellant

VS

1.K.C.Sekar

2.The Manager

The Nilgiris District Central Co-operative Bank Ltd.,
Kothagiri,
The Nilgiris.

..Respondents

Appeal filed under Section 96 of Civil Procedure Code, 1908
against the judgment and decree of the District Judge of Nilgiris at
Udhagamandalam dated 31.07.2007 passed in O.S.No.2 of 2007.

For Appellant : Mr.MA.P.Thangavel
for Mr.K.Kamesh

For Respondents : No Appearance

JUDGMENT

1. This appeal suit is filed aggrieved by the judgment and
decree of the District Judge, Nilgiris at Udhagamandalam dated
31.07.2007 passed in O.S.No.2 of 2007 in and by which the suit



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for specific performance filed by the plaintiff was decreed only to the extent of return of advance amount of Rs.50,000/- along with interest at 12% per annum from the date of suit till the repayment while refusing the prayer for specific performance.

2. When the matter came up for hearing today, there was no appearance on behalf of the respondents.

3. Learned counsel appearing on behalf of the appellants reported no instructions. Therefore, this Court perused the records of the case and took up the matter for disposal, considering the fact that the Appeal Suit is of the year 2011 and cause of action arose in the year 2004.

4. On a perusal of the records of the case, it is the case of the plaintiff that on 02.09.2004, the first defendant who is the owner of the suit property entered into an agreement with the plaintiff for sale consideration of Rs.10,25,000/- and received Rs.5,000/- as advance. Thereafter, on 22.11.2004, the plaintiff paid Rs.20,000/- and the time for execution of the sale deed was extended till the end of December, 2004. Thereafter, the plaintiff paid another sum of Rs.25,000/-, on 01.11.2004 and the time for



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execution of the sale deed was extended till April, 2005. Therefore, the plaintiff has totally paid Rs.50,000/- as advance. However, when the plaintiff was ready with the balance sale consideration of Rs.9,75,000/- on 03.11.2004 and was waiting in the office of the Sub-Registrar, Kothagiri, after due purchase of stamp papers, the first defendant did not turn up. The first defendant gave lame excuses that he was unwell, but however had mortgaged the suit property for a sum of Rs.7,25,000/- to the second defendant / Bank. Therefore, the plaintiff issued pre-suit notice on 03.10.2006 and also on 06.10.2006 calling upon the first defendant to execute the sale deed but however there was no response and hence the suit.

5. It is the case of the defendants that, as agreed between the parties, the plaintiff failed to pay the accrued interest payable by the first defendant to the second defendant / Bank. The second defendant insisted the first defendant to pay interest, however even after extension of time, the plaintiff did not periodically make the payment so that the interest can be paid, but however insisted that the sale deed to be registered in favour of one Godwin Robbert, who is not a party to the sale agreement. The plaintiff failed to perform his part of the contract. The first defendant had



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duly issued notice on 08.04.2006 and thereafter the first defendant had also entered into an agreement with one Karthikeyan to sell the said property. The said Karthikeyan is also in possession of the suit property and thus prayed for dismissal of the suit.

6. The second defendant also contested the suit by filing separate written statement stating that the first defendant executed the mortgage deed in respect of the suit property in favour of the second defendant / Bank on 29.08.2003 and obtained loan of Rs.6,75,000/-. Therefore, it is their contention that the said agreement will not bind the Bank and the first defendant has to pay Rs.6,71,260/- which is due to them.

7. Based on the above pleadings, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the relief of specific performance?
2. Whether the suit is barred by limitation?
3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether the plaintiff is entitled to the alternative relief of refund of the advance



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amount?

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8. On the issues framed above, the parties let in evidence. The plaintiff examined himself as PW1 and one T.L.Udayakumar was examined as PW2. On the side of the plaintiffs, Exs.A1 to A13 were marked. The first defendant examined himself as DW1 and on behalf of the defendants Exs. B1 and B2 were marked. The trial Court thereafter proceeded to consider the issues and by judgment dated 31.07.2007 held that even though as per the case of the plaintiff, time is extended till April, 2005 to complete the sale, even thereafter the plaintiff kept quiet and sent the notice only on 03.10.2006. Therefore, the suit was filed on 25.01.2007. Considering the delay and also considering the existing loan of the first defendant to the second defendant / Bank and the non-payment of the loan amount in toto or the interest, the trial Court found that the plaintiff did not prove that he was ready and willing to perform his part of the contract and he did not even press the relief regarding payment of the loan payable by the first defendant to the second defendant / Bank by mortgaging the suit property. Therefore, in the said circumstances refusing the relief of the specific performance and ordered refund of the advance amount paid i.e., Rs.50,000/- with interest at 12% per annum from the



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date of plaintiff till date of re-payment, the present appeal is laid before this Court.

9. On perusal of the memo of the grounds of appeal, it is the contention of the appellant that the trial Court ought to have considered that the purchase of the stamp papers in Exs. A7 and A8 would palpably demonstrate that the plaintiff was ready and willing to perform his part of the contract. Further, it is the contention that as per Clause 6 of Ex.A1 agreement the vendor has to execute the sale deed in favour of the purchaser or his nominee and, therefore, the contention of the first defendant that the plaintiff insisted upon executing the sale deed in favour of the third party ought not to have been considered by the trial Court. When the plaintiff has proved that he was ready and willing on 03.11.2004 at the Sub-Registrar Office, Kothagiri and when the first defendant had failed to comply with the terms of the agreement, the trial Court ought to have decreed the suit for specific performance. Therefore, it is the contention of the appellant that there is no application of mind on the part of the trial Court and the appellant, therefore, would pray that the judgment and decree of the trial Court be set aside and the suit for specific performance be decreed as prayed for.



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10. I have considered the grounds of appeal and perused the material records of the case.

11. Upon consideration of the same, the following points arise of considering in this Appeal:

(i) Whether the plaintiff is entitled to insist for sale deed to be executed in the name of third party ?

(ii) Whether the plaintiff was ready and willing to perform his part of the contract ?

(iii) To what relief the plaintiff is entitled to ?

12. Firstly, the appellant / plaintiff is right in contending that the sale agreement mandates execution of the sale deed to the plaintiff or his nominee and, therefore, the contention of the first defendant that the plaintiff insisted upon executing the sale consideration in favour of Godwin Robbert and, therefore, he refused the execution need not be accepted by the Court. But however a perusal of the judgment of the trial Court makes it clear that the plaintiff's prayer for specific performance was not refused on that score. The ground on which the plaintiff's relief of specific performance is refused was that the plaintiff failed to prove that he



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was always ready and willing to perform his part of the contract.

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13. Secondly, on a perusal of the material records of the case, it is clear that the plaintiff purchased the stamp papers and was waiting at the office of the Sub-Registrar, Kotagiri on 03.11.2004. In this regard, it can be seen that even as per the case of the plaintiff, the plaintiff paid advance amount of Rs.25,000/- on 01.11.2004 and the time for completion of the sale was extended till 2005. In this background, it is stated by the plaintiff that even two days thereafter, the plaintiff was waiting in the office of Sub-Registrar, Kothagiri. On perusal of the evidence, it is made clear that nothing has been put forth on behalf of the plaintiff about the notification to the first defendant to go for execution of the sale deed on 03.11.2004 or for keeping the sale consideration ready with the plaintiff. Even assuming that the plaintiff was ready on 03.11.2004, it can be seen that long thereafter, a legal notice was issued only on 03.10.2006 and the suit was filed on 21.05.2007. The said delay is coupled with the fact that there was no averment in the plaint as to the manner of settlement of the mortgage loan also. Therefore, it can be seen that the plaintiff was not ready and willing at the relevant point of time to pay the interest due to the second defendant / Bank. There



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are also laches on the part of the plaintiff, when it is the case of the plaintiff that as on 03.11.2004, the defendant went back on the obligation under the agreement and thereafter the legal notice was issued only on 03.10.2006. If the plaintiff is ready and willing to perform his part of the contract with the entire sale consideration of Rs.9,75,000/-, there was no need for him to issue the legal notice after almost one year and file suit after one year and three months. Therefore, all these factors, if considered cumulatively, this Court has to come to the conclusion that the plaintiff was not ready and willing to perform his part of the contract and thus, the trial Court has rightly refused the prayer of specific performance while ordering the return of the advance amount of Rs.50,000/- with interest at 12% per annum from the date of plaint till date of re-payment.

14. In view of above finding, I answer the points for consideration accordingly. I also answer issue no.1 that the plaintiff is not entitled to the relief of specific performance. In view thereof, answer to issue nos. 2 and 3 does not arise and as far as the issue no.4 is concerned, I answer that the plaintiff has alternative relief of refund of the advance amount along with interest at 12% per annum as decreed by the trial Court.



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15. In the result, the following order is passed:-

- (i) A.S.No.276 of 2011 is dismissed.
- (ii) The judgment and decree of the trial Court dated 31.07.2007 in O.S.No. 2 of 2007 shall stand confirmed.
- (iii) There shall be no order as to costs.

31.10.2022

Index:Yes/No
ssm

To

1.The District Judge of Nilgiris at Udhagamandalam.

2.The Manager
The Nilgiris District Central Co-operative Bank Ltd.,
Kothagiri,
The Nilgiris.



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D.BHARATHA CHAKRAVARTHY.,J

(ssm)

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